

METRO ACT

Additional Questions and Answers to Assist in Implementing the Act.

1. **Q. Who must acquire a permit? And where?**
A. All providers “owning telecommunications facilities located within a public right of way”, excluding a federally licensed provider of commercial mobile radio service as defined in the FTA, 47 U.S.C. 332, and service provided by any wireless two way communication device as described on section 2(k) of PA 48, must acquire a permit from municipalities where facilities are located.
2. **Q. Providers who *lease* telecommunication facilities, must they get a permit also?**
A. No, only telecommunications providers that *own* telecommunication facilities must get a permit.
3. **Q. If a provider has a permit under the prior Michigan Telecommunications Act (MTA), must the provider still file a permit?**
A. No, a provider who filed a permit under the MTA satisfies the METRO Act’s permit requirements.
4. **Q. When is the deadline to file a permit?**
A. Providers without permits have until May 1, 2003 to apply for a permit. The METRO Authority may extend it up to October 31, 2003.
5. **Q. If a provider fails to file a permit, what are the consequences?**
A. No access to public right-of-way and subject to fines under section 18(2) of the Act. In addition, the provider may be trespassing and may be subject to civil infraction penalties.
6. **Q. How will a provider know whether a municipality is in compliance with the act or not?**
A. “The municipalities shall provide each provider affected by the fee a copy of the resolution or ordinance” as adopted by the municipality in compliance with section 14(1) of PA 48.
7. **Q. If a municipality “opts out”, must the provider still file a permit with that municipality?**
A. Yes, and the provider is still obligated to comply with any other existing rules and regulations.
8. **Q. Must cable companies providing telecommunications services file a permit?**
A. A separate provision for cable franchise holders under section 8(11) allows for an alternative agreement to satisfy the permit requirements.
9. **Q. Who is exempt from filing a permit?**
A. A governmental entity, educational institution or utility, who does not provide telecommunication service to outside third parties, as specified in section 8(18,19,20) is exempt from filing a permit.

10. Q. What do providers get in return?

A. They will receive relatively uniform treatment among Michigan municipalities including a safe harbor permit to streamline the permit process. If there is no agreement between both parties, the matter is submitted to mediation and, if not resolved in that manner, the Michigan Public Service Commission will decide.

11. Q. What's the difference between the unilateral permit and the bilateral permit?

A. The bilateral permit is a signed contractual agreement for up to 30 years (initial 15 years with a possibility of another 15 year extension). The unilateral permit is issued by a municipality and is for 5 years or less.

12. Q. What are the fees associated with this permit?

A. There will be a \$500 one time application fee paid to the municipality (not applicable to SBC, Verizon, and others claiming grandfathered franchises). Also, an annual fee is paid to the METRO Authority (who will eventually distribute it to the various municipalities) in the following manner:

- (1) 2-Cent Assessment Period: the provider must pay 2 cents/linear foot prorated from November 1, 2002 to March 31, 2003 (.83 cents).
- (2) Annual Assessment Period: the provider must pay 5 cents/linear foot/year. The annual fee must be paid by April 29 for prior 12 months (April to March).

13. Q. What telecommunication facilities are included in the assessment of linear feet?

A. PA 48 defines "telecommunication facilities" as "the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, and service provided by any wireless, 2-way communication device."

14. Q. Will the underserved areas be negatively affected by this act?

A. No, the METRO Authority may waive fees for underserved areas (as defined in Broadband Development Authority Act 49 of 2002). Two thirds of the municipalities must also approve the waiver because it reduces their payments from the Authority.

15. Q. For Telecommunication providers who share facilities, how does the METRO Authority assess their fees?

A. Providers sharing poles, trenches, etc...will receive a 40% discount of their fees. It applies only to new facilities installed on or after November 1, 2002 pursuant to shared use agreements executed after November 1, 2002.

16. Q. How and when will the collected fees be distributed to the municipalities?

A. 100% of the collected funds will be distributed back to the municipalities by May 31 of each year. Cities and villages will receive 75% using the PA 51 formula. Townships

will receive 25% based on the total linear feet of right-of-way in the township as specified in section 11 of PA 48.

17. Q. When and how must the municipalities “opt in”?

A. The municipalities must “opt in” by December 31, 2003. However, if the municipalities wish to receive a payment by May 2003, the Authority strongly encourages the Municipalities to be in compliance by April 29, 2003. The municipalities must send the Authority as well as the providers (section 13(4)) a resolution or ordinance stating their decision to comply with the METRO Act. In addition, the municipality must modify “any fees charged to providers after November 1, 2002 relating to access to and usage of the public rights of way to an amount not exceeding the amount of fees and charges required under this Act.”

18. Q. If a municipality decides to “opt out”, what will happen?

A. The municipalities that “opt out” will not be eligible to receive any funds from the METRO Authority. The municipality will then be required to use its existing permit agreements with telecom providers. At such time as the permit expires, it will be unable to charge fees.

19. Q. How can a municipality verify they are in compliance with the METRO Authority?

A. Contact Mr. Robert Tuttle of the METRO Authority at:
Phone: 517-335-5448
Email: retuttl@michigan.gov
Web: www.cis.state.mi.us/mpsc/comm/broadband/metroauthoritywebpage.pdf

20. Q. How can the municipalities dispose of these monies distributed from the fund?

A. Distributions must be used “solely for rights-of-way related purposes”. In addition, municipalities with over 10,000 population must file an annual report with the Authority on use and disposition of funds.

21. Q. Would MDOT improvements, sidewalks, and management tool software be considered “rights-of-way related purposes”?

A. These items can be considered “rights-of-way related purposes” if they comply with section 10(4) of PA 48.

22. Q. Could insurance be purchased instead of a bond?

A. The METRO Act clearly specifies “a municipality may require as a condition of the permit that a bond be posted by the provider, which shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the provider’s access and use.”